SUPREME COURT, U. S.
FILED
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IN THE

Supreme Court of the United States

October Term, 1971.

No. 71-1454

DOLORES BRENNAN and
ANNE E. LONERMAN and
WILLIAM JONES,

Petitioners,

v.

GEORGE R. HAINES, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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INDEX.

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	6
1. The Court of Appeals Erred in Failing to Convene a Three-Judge Court	6
2. The Court of Appeals Erred in Not Deciding This Case on the Merits	10
3. The Provision of the First Class Township Code With Respect to Filling Vacancies on a Township Board of Commissioners Is Violative of the Fifth and Fourteenth Amendments to the Federal Constitution	12
CONCLUSION	13
APPENDIX:	
Declination to Convene a Three Judge Court	A1
Order	A2
Court of Appeals Opinion	A3
Court of Appeals Judgment	A7
Act of April 27, 1967, P. L. No. 9, § 1 (53 P. S. § 55530)	A9
Three Judge Court Act, 28 U. S. C. § 2281	A10

CITATIONS.

Cases:

	Page
Avery v. Midland County, Texas, 390 U. S. 474 (1968)	8, 12
Baker v. Carr, 369 U. S. 186 (1962)	12
Buchanan v. Rhodes, 400 F. 2d 882 (6th Cir. 1968), cert. denied, 393 U. S. 1062	9
Ex Parte Poresky, 290 U. S. 30 (1933)	6, 8
Goldman v. Knecht, 295 F. Supp. 897 (D. C. Colo. 1969)	9
Gong v. Kirk, 375 F. 2d 729 (5th Cir. 1967)	9
Gray v. Sanders, 372 U. S. 368 (1963)	13
Haakenson v. Parkhouse, 312 F. Supp. 929 (E. D. Pa. 1970)	9
Hyden v. Baker, 286 F. Supp. 475 (N. D. Tenn. 1968)	9
Jackson v. Choate, 404 F. 2d 910 (5th Cir. 1968)	11
Kaelin v. Warden, 334 F. Supp. 598 (E. D. Pa. 1971)	8
Kaelin v. Warden, 334 F. Supp. 602 (E. D. Pa. 1971)	7, 8, 10
Kramer v. Union Free School District No. 15, 379 F. 2d 491 (2d Cir. 1967)	9
Mayhue's Super Liquor Store, Inc. v. Meiklejohn, 426 F. 2d 142 (1970)	11
Moore v. Ogilvie, 394 U. S. 814 (1969)	12
Ramarick v. Johansen, 310 F. Supp. 61 (D. C. Minn. 1970)	9
Reynolds v. Sims, 377 U. S. 533 (1964)	9, 12
Shackman v. Arnebergh, 387 U. S. 427 (1967)	11

Federal Statutes:

28 U. S. C. 1254(1)	2
28 U. S. C. 2281 et seq.	2, 5, 6, 9
42 U. S. C. 1983	4

Pennsylvania Statutes:

Act of June 24, 1931, P. L. 1206 Sec. 504 as amended 53 P. S. Sec. 55504 (First Class Township Code)	2, 3, 8
Third Class County Statute, 16 P. S. 501[b]	8
Act of April 27, 1967, P. L. 9, Sec. 1, 53 P. S. Sec. 55530	2, 13

CITATIONS (Continued).

Other Authority:

Currie, Appellate Review of the Decision Whether or Not to Empanel a Three-Judge Court, 37 U. Chi. L. Rev. 159 (1969) 11

U. S. Constitution:

Fifth Amendment 2, 4
Fourteenth Amendment 2, 4, 13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. ———.

DOLORES BRENNAN AND ANNE E. LONERMAN AND WILLIAM JONES,

Petitioners,

v.

GEORGE R. HAINES, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Dolores R. Brennan, Anne E. Lonerman and William Jones pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above entitled case on February 11, 1972. The Trial Judge did not render a written opinion. The opinion of the Chief Judge of the Third Judicial Circuit Declining to Convene a Three Judge Court, is unreported and is printed in Appendix page 1. The order of the Trial Judge dismissing plaintiffs' complaint is printed in Appendix page 2. The opinion of the Court of Appeals affirming the order of the District Court is unreported and is printed in Appendix page 3, and the Judgment of the Court of Appeals is printed in Appendix page 8.

JURISDICTION.

The Judgment of the Court of Appeals affirming the order of the District Court, was entered February 11, 1972. Jurisdiction of this Court is invoked under 28 U. S. C. 1254[1].

QUESTIONS PRESENTED.

1. Did the Court of Appeals Err in Failing to Convene a Three Judge Court Pursuant to 28 U. S. C. 2281.

2. Did the Court of Appeals Err in Not Deciding This Case on the Merits.

3. Did the Court of Appeals Err in Not Finding the provision of the First Class Township Code of Pennsylvania With Respect to Filling Vacancies on a Township Board of Commissioners Violative of the Fifth and Fourteenth Amendments to the Federal Constitution.

STATUTORY PROVISIONS INVOLVED.

The statutory provisions involved are the Equal Protection Clause of the Fifth and Fourteenths Amendments of the United States Constitution, the Three-Judge Court Act, 28 U. S. C. 2281 et seq., and the Act of April 27, 1967, P. L. 9, Sec. 1 (53 P. S. 55530). The text of the Three-Judge Court Act and the Act of April 27, 1967 are set forth in full in Appendix page 9 and 10.

STATEMENT OF THE CASE.

Abington Township is a township of the First Class, organized under the laws of Pennsylvania. The Township is governed by a Board of Fifteen Commissioners in accordance with the provisions of the First Class Township Code, Act of June 24, 1931, P. L. 1206 Sec. 504, as amended, 53 P. S. Sec. 55504. Each commissioner is elected from one of the fifteen wards in the Township by the voters of his ward only. In the municipal elections of 1969, Hugh A. O'Neill was elected commissioner from the Eighth Ward for a four year term. On June 11, 1970, six months after his election, Hugh A. O'Neill resigned his office effective as of June 30, 1970.

The provision of the Pennsylvania Township Code with respect to filling vacancies on Township Boards of Commissioners provides:

Act of April 27, 1967, P. L. No. 9, § 1 (53 P. S. § 55530)

> "When a vacancy occurs in the office of township commissioner in any township, by reason of death, resignation, removal from the township or ward, or otherwise, the board of township commissioners of such township shall fill such vacancy by appointing by resolution a registered voter of the ward or township, as the case may be in which the vacancy occurs. If the board of township commissioners of any township shall refuse, fail, or neglect, or be unable for any reason whatsoever, to fill such vacancy within thirty days (30) after the vacancy occurs, then the Court of Quarter Sessions shall upon the petition of twenty registered voters of the ward or township, as the case may be, in which the vacancy occurs appoint a registered voter of the township to fill the vacancy. In either event, the person so appointed shall have been a resi-

dent of the township continuously for at least one (1) year before his appointment and shall hold office for the unexpired term of the person whose place he is appointed to fill. In townships divided into wards, a commissioner appointed by either the Board of Commissioners or the Court of Quarter Sessions shall reside in the ward in which the vacancy occurred and shall have resided in said ward continuously for at least one (1) year before his appointment."

In accordance with this statute, on July 27, 1970, the fourteen remaining Commissioners none of whom had been elected by the voters of the Eighth Ward appointed Brynmor Davis, Jr. to serve as Commissioner of the Eighth Ward and fill the unexpired term vacated by Mr. O'Neill. The unexpired term was then approximately three and one half years.

Petitioners are citizens of the United States and of the Commonwealth of Pennsylvania and each resides and is registered to vote in the Eighth Ward of Abington Township. Respondents are the Fourteen Commissioners of Abington Township who voted on the appointment of Davis; Davis—presently serving as Commissioner of the Eighth Ward; plus the Treasurer of Abington Township and the County Board of Elections of Montgomery County.

Petitioners brought this action pursuant to the provisions of 42 U. S. C. 1983, alleging that the appointment of respondent, Davis, by respondent Commissioners to represent petitioners on the Board of Commissioners of Abington Township is violative of the rights guaranteed to petitioners by the Fifth and Fourteenth Amendments of the United States Constitution. Accordingly, petitioners requested: that Davis be temporarily enjoined from participating in the Office of Township Commissioner; that

respondent Township Treasurer be enjoined from dispensing public monies to Davis; that the statute by which Davis was appointed be declared violative of the Constitution of the United States; and that the office of Township Commissioner for the Eighth Ward be declared vacant and a special election be ordered.

Subsequent to filing their complaint, petitioners moved for the convening of a Three-Judge Court pursuant to the provisions of 28 U. S. C. 2281 et seq. The District Court then made recommendation to the Chief Judge, who on April 5, 1971 declined to convene a Three-Judge Court. In light of the order of the Chief Judge declining to convene a Three-Judge Court and thereby removing jurisdiction to grant the relief requested, the District Court dismissed the Complaint on April 28, 1971. On February 11, 1972 the Court of Appeals, in a Per Curiam opinion affirmed the Order of the District Court.

REASONS FOR GRANTING THE WRIT.

1. The Court of Appeals Erred in Failing to Convene a Three-Judge Court.

Petitioners have requested that this matter be heard by a Three-Judge Court as required by 28 U. S. C. § 2281 et seq., since only a District Court composed of three judges has the power to enjoin the enforcement of a state statute by a state officer on grounds of unconstitutionality. The Order of the District Court dismissing the Complaint was entered on the basis that it alone did not have the power to grant the relief requested in the complaint.

There are three requirements which must be met before a three-judge court can be convened. Two are imposed by federal statute—the challenge must be to the constitutionality of a state statute, and the enforcement or operation of that statute must be by a state officer. The respondents have acknowledged that each of these requirements exist.

The third requirement for empaneling a three-judge court is that the Complaint must present, at least formally, a constitutional question which is not on its face without merit, and such a question must be "not unsubstantial". This Court has defined an "unsubstantial question" as one which is either "obviously without merit" or one which has had its unsoundness demonstrated by previous decisions of the Supreme Court. *Ex Parte Poresky*, 290 U. S. 30, 32 (1933).

In the Court of Appeals, petitioners argued that this case presents a substantial constitutional question because the statute that was complied with when Brynmor Davis, Jr. was appointed gave the voters of the Eighth Ward no part in the selection of their representative, or of the persons who selected their representative. The voters in the other fourteen wards elected the Commissioners who in

turn voted for the appointment of Davis. In its opinion the Court of Appeals stated, "that this procedure acts to deny the citizens of the ward faced with a vacancy any role in the selection of a replacement." (Appendix page 5). The Court of Appeals also stated that "[t]he new commissioner is the choice solely of those Commissioners remaining on the board when the vacancy is filled" and "[n]one of these individuals was elected by the vote of the electorate of the ward where the vacancy exists" (Appendix page 5). Although the Court of Appeals acknowledged that a "potential for unfairness" exists in this situation, it concluded that it does not pose a substantial constitutional question.

Petitioners pointed out in their Brief to the Court of Appeals that this case differs markedly from those instances where a governor or president makes an appointment to fill a vacancy since in those instances *all voters* have a choice in electing the appointing official, whereas in the instant case the voters of the Eighth Ward had no choice in electing the appointing Commissioner. However, in its opinion, the Court of Appeals ignored this distinction. The Court cited *Kaelin v. Warden*, 334 F. Supp. 602 (E. D. Pa. 1971) for the proposition that the use of the appointive process to fill a vacancy is not foreign to traditional notions of representative government and that the appointive procedure is specifically condoned by the Seventeenth Amendment in order to fill vacancies in the United States Senate. Petitioners agree that the appointive procedure as provided by the Seventeenth Amendment for temporary appointments is not violative of traditional notions of representative government because under the Seventeenth Amendment the "appointing official" is the states governor whom *all* voters have a part in electing. If, however, the Amendment provided that a vacancy in the Senate was to be temporarily filled by majority appointment of the Senators of all states

except that in which the vacancy occurred, we would have a factual situation analogous to the instant case.

Petitioners assert that the statutory scheme for filling vacancies in the Office of Township Commissioner is inherently offensive to the Federal Constitution. Although there is no constitutional requirement that local officials be popularly elected, it is clear that once the legislature decides to permit popular election it is absolutely bound to conduct such elections in strict conformity with the Federal Constitution. *Avery v. Midland County, Texas,* 390 U. S. 474 (1968).

The Third Circuit Court of Appeals discussed, in its opinion, the recent case of *Kaelin v. Warden,* 334 F. Supp. 598 (E. D. Pa. 1971). There, a three-judge court was empanelled to consider the constitutionality of the Pennsylvania Third Class County Statute, 16 P. S. 501[b], for filling vacancies on a County Board of Commissioners.

Although the case at bar differs from *Kaelin* in that here the First Class Township Code is under attack, petitioners fail to see why a three-judge court was required in *Kaelin* and not in the instant case, especially in light of the Court of Appeals statement that the situation *although unfair* does not reach federal constitutional proportions. If anything, the system which is under attack in the case at bar presents a more substantial constitutional question than *Kaelin* because under the Third Class County Code, considered in *Kaelin,* the appointment is made by the Judges of the Court of Common Pleas who are elected by the voters at large, whereas under the First Class Township Code the voters of the ward faced with a vacancy have no voice, direct or indirect, in the election of appointing official.

Under the test as set forth in *Poresky, supra,* the question to be asked in determining "substantiality" is whether the question is "not on its face without merit". In the following cases the District Court held this to be the case and,

therefore, empanelled a three-judge court as required by Secs. 2281, et seq.

In *Hyden v. Baker,* 286 F. Supp. 475 (M. D. Tenn. 1968), it was held that the question of whether the equal representation requirements of *Reynolds v. Sims,* 377 U. S. 533 (1964) applied to the Quarterly Courts of Tennessee Counties was such an issue. In *Kramer v. Union Free School District No. 15,* 379 F. 2d 491 (2d Cir. 1967), the question of whether participation in elections for school boards could be constitutionally limited to persons who owned or leased real estate or had children enrolled in the schools, was held to be substantial. In *Goldman v. Knecht,* 295 F. Supp. 897 (D. C. Colo. 1969), the same result was reached concerning a challenge to the Colorado Vagrancy Law.

In the overwhelming majority of cases when an aspect of "voting rights" was involved, the District Court has seen fit to empanel a three-judge court due to the substantiality of the constitutional question—because a case involving the Equal Protection Clause and the right to vote is "not obviously without merit". In *Buchanan v. Rhodes,* 400 F. 2d 882 (6th Cir. 1968), Cert. denied 393 U. S. 1062, the District Courts refusal to empanel a three-judge court was reversed on grounds that the constitutionality of the Ohio statute providing for election and assignment of judges requires the convening of a three-judge court. In *Gong v. Kirk,* 375 F. 2d 729 (5th Cir. 1967) the Fifth Circuit Court of Appeals held that only a three-judge court can consider the constitutionality of the Florida Apportionment Plan. In *Haakenson v. Parkhouse,* 312 F. Supp. 929 (E. D. Pa. 1970), a three-judge court was empanelled to decide the constitutionality of a state statute regulating absentee ballot. In *Ramarick v. Johansen,* 310 F. Supp. 61 (D. C. Minn. 1970) a three-judge court decided the valid-

ity of a state statute dealing with home rule charter amendments. And, as noted above, in *Kaelin v. Warden, supra,* a three-judge court was empanelled to consider the constitutionality of a state statute which provided procedures for filling vacancies in a Third Class County Board of Commissioners.

From the foregoing, it seems clear that this case presents, at the very least, a constitutional question which is not on its face without merit, and therefore, the Court of Appeals erred in failing to reverse the District Court and order the matter heard before a three-judge court.

2. The Court of Appeals Erred in Not Deciding This Case on the Merits.

In its opinion, the District Court did not address itself to petitioners request that this case be heard on the merits. In support of their request for injunctive relief, petitioners have averred, in their Complaint, that defendant Davis, sitting as a member of the Abington Township Board of Commissioners, is enacting and will help to enact in the future, ordinances and resolutions concerning such matters as taxes, zoning regulations, traffic regulations, health and welfare regulations and other regulations which will affect and be binding upon petitioners. On November 13, 1970 this action was initiated, and by the time this Court considers this petition, Davis may have been sitting for almost two years. During this time Davis will have been representing the interests of the residents of the Eighth Ward and committing what petitioners urge to be irreparable harm. Assuming that this Court grants the instant petition several more months may pass before a hearing and argument before this Court. If at that time this Court limits itself to the issue of whether or not a three-judge court should be empanelled, there is a high likelihood that this

case will be mooted. The term of the office occupied by respondent Davis expires in November of 1973 when the next local elections are held. If this Court grants the petition, hears the case, and remands with an order to empanel a three-judge court, by the time of hearing and decision by the three-judge court, the next election day will almost surely have arrived.

Since its inception in 1910, the Three Judge Court Act has gone through a long and troubled history. Both courts and commentators alike have pondered the question of which cases are properly presented to a three-judge court, and where appeals lie from decisions refusing to convene such a Court. See, e.g. *Currie, Appellate Review of the Decision Whether or Not to Empanel a Three-Judge Court,* 37 U. CHI. L. REV. 159 (1969) wherein the author stated at page 165: "some day a new statute may show which orders in three-judge cases are reviewable in which courts". One Court has attempted to explain the reason for this confusion:

> "The confusion is inherent in the 3 judge statutes and their *application to present day problems* . . . Any such confusion is especially apparent concerning appeals from a 1 judge and/or 3 judge order." *Mayhue's Super Liquor Store, Inc. v. Meiklejohn,* 426 F. 2d 142, 146 (1970) (emphasis added).

Although it is clear that petitioners have taken the proper procedural steps in advancing this litigation, *Schackman v. Arnebergh,* 387 U. S. 427 (1967), the foregoing discussion amply illustrates the administrative inefficiency and judicial delays inherent in the system. Cf. *Jackson v. Choate,* 404 F. 2d 910 (5th Cir. 1968). Unless this court accepts jurisdiction to determine this controversy on the merits, the practical result is that petitioners case will be mooted.

3. The Provision of the First Class Township Code With Respect to Filling Vacancies on a Township Board of Commissioners Is Violative of the Fifth and Fourteenth Amendments to the Federal Constitution.

The pleadings in this case demonstrate that there is no factual dispute—the only question being a legal determination as to whether this set of facts constitutes a denial of equal protection of the law. Although respondents deny that each Commissioner represents the voters in the ward in which he resides, they acknowledge that each Commissioner is elected solely from one ward.

Beginning with *Baker v. Carr*, 369 U. S. 186 (1962) and continuing with *Reynolds v. Sims*, 377 U. S. 533 (1964) and *Avery v. Midland County, Texas*, 390 U. S. 474 (1962) this Court has developed a considerable body of case law concerning the problems of dilution of votes by malapportionment, consistently insisting on a one-man one-vote apportionment, first for state offices and finally in *Avery* for local and county offices. Rather than a diluted vote, the instant case presents a situation where the right to vote is not only taken away from a class of persons, i.e. the voters of the Eighth Ward, but is actually given indirectly to another class of voters i.e., the voters of all the other wards through the remaining Commissioners.

The one-man, one-vote rule can not be looked at in a vacuum for it is said to apply to correct any situation where inequality of voting strength exists. In declaring the Illinois system for selecting presidential voters invalid, this Court has defined the breadth of the equal protection clause as it applies to the vote:

> "The idea that one group can be granted greater voting strength than another is hostile to the one-man, one-vote basis of our representative government." *Moore v. Ogilive*, 394 U. S. 814, 819 (1969).

Moreover, once the franchise is extended to a class of voters, e.g. the voters of the Eighth Ward, the Fourteenth Amendment commands equal protection in the exercise of that franchise.

> "(O)nce the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting may be evaded." *Gray v. Sanders*, 372 U. S. 368 (1963).

The statute presently under consideration clearly takes away from a group of voters the right to select a representative of their choice. It is for this reason that the provision for filling vacancies under the First Class Township Code is violative of the Fourteenth Amendment to the Federal Constitution.

CONCLUSION.

The foregoing discussion clearly demonstrates that the Act of April 27, 1967, P. L. 9 Sec. 1 (53 P. S., 55530) as applied to this case not only raises a substantial constitutional question but also it presents an obvious violation of the Fourteenth Amendment to the Federal Constitution. Since the case may become moot if the Writ is granted only on the question of the propriety of empanelling a Three-Judge Court, it is submitted that this Court should grant the Writ for the purpose of a full hearing on the merits.

Wherefore, petitioners pray that this Petition for a Writ of Certiorari be granted.

MITCHELL A. KRAMER,
Counsel for Petitioners.

Of Counsel:
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Appendix.

DECLINATION TO CONVENE A THREE JUDGE COURT.

Having considered the request of Honorable John B. Hannum, United States District Judge, before whom this case is pending, that I convene a Three Judge Court to hear and decide this controversy, and having considered the complaint herein, I conclude that the plaintiffs' formal challenge to the constitutionality of a state statute is not such as to warrant the convening of a Three Judge Court. Accordingly, I decline to convene such a court.

WILLIAM H. HASTIE
Chief Judge
Third Judicial Circuit

Dated: April 5, 1971.

ORDER.

AND NOW, this 28th day of April, 1971, in light of the Order of Chief Judge Hastie declining to convene a three judge court and thereby removing jurisdiction from this court to grant the relief requested by the plaintiffs, it is hereby ORDERED that plaintiffs' Complaint be DISMISSED WITH PREJUDICE.

J. L. B. HANNUM, *J.*

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.

Nos. 71-1503 through 71-1505.

DOLORES BRENNAN, ANNE E. LONERMAN AND WILLIAM JONES

v.

GEORGE R. HAINES, MAX M. SOLOMON, EDWARD M. REILLY, GEORGE F. SHUSTER, WILLIAM D. C. DENNIS, DENNIS P. DOUGHERTY, RUSSELL S. DETWEILLER, FRED W. GENTNER, RICHARD Z. KINARD, HORACE F. RICHTER, JR., BERNARD J. ENRIGHT, JR., PERCY S. HARTZELL, JAMES J. SULLIVAN, HENRY J. GRANT, BRYNMOR DAVIS, JR., WILLIAM H. YOST, RUSSELL PARKHOUSE, FRANKLIN JENKINS, AND DANIEL COSTELLO

DOLORES BRENNAN,
Appellant in No. 71-1503

ANNE E. LONERMAN,
Appellant in No. 71-1504

WILLIAM JONES,
Appellant in No. 71-1505

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Argued December 1, 1971.

Before SEITZ, *Chief Judge*, KALODNER and GIBBONS, *Circuit Judges*.

OPINION OF THE COURT OF APPEALS.

(Filed February 11, 1972.)

PER CURIAM:

This is an appeal from an order of a single judge of the district court dismissing appellants' complaint with prejudice. The complaint, invoking jurisdiction under 42 U. S. C. § 1983, asserts that a Pennsylvania statute violates the Fourteenth Amendment.

The facts focus on the election procedures applicable to filling vacancies on the Board of Commissioners of Abington Township, Pennsylvania. Abington, a township of the First Class, is governed by a board of fifteen commissioners. Under the First Class Township Code [1] one commissioner is elected from each of the fifteen Abington ward districts. In the 1969 municipal elections Hugh O'Neill was elected commissioner of the Eighth Ward. He later resigned. In accordance with the provision of the Code governing vacancies [2] the fourteen remaining board members, among themselves, then elected Brynmor Davis, Jr. to fill Mr. O'Neill's unexpired term. Mr. Davis was a resident of the Eighth Ward as the law required.

Appellants are registered voters of the Eighth Ward who had voted for O'Neill in the 1969 election. Subsequent to the filing of their complaint they requested that a three-judge court be convened pursuant to 28 U. S. C. §§ 2281, 2284. The single judge district court recommended to then Chief Judge Hastie that such a court be convened. Judge Hastie refused for the reason that "the [appellants'] formal challenge to the constitutionality of [the] state statute [was] not such as to warrant the convening of a

1. Act of June 24, 1931, P. L. 1206 § 504, as amended, 53 P. S. § 55504.

2. Act of April 27, 1967, P. L. 9 § 1, 53 P. S. § 55530.

Three Judge Court." The district court thereafter dismissed the complaint and this appeal followed.

No opinion accompanied the district court's order. However, we think it clear that the district court concluded, in view of Judge Hastie's reasoning, that the complaint failed to state a claim under the equal protection clause. It, therefore, dismissed the complaint on its own motion.

The appellants' complaint attacks the constitutionality of statutory procedures for filling vacancies in First Class township boards. Under those procedures the board members in office effect a consensus appointment to their membership of a resident of the district where the vacancy exists. It is true that this procedure acts to deny the citizens of the ward faced with a vacancy any role in the selection of a replacement representative. The new commissioner is the choice solely of those commissioners remaining on the board when the vacancy is filled. None of these individuals was elected by the vote of the electorate of the ward where the vacancy exists. Although there is a potential for unfairness in this situation, we do not think it reaches federal constitutional proportions.

Appellants contend that the failure of the vacancy procedures to assure them a voice in the selection of an interim commissioner poses a substantial constitutional question. See Miller v. Smith, 236 F. Supp. 927, 930 (E. D. Pa. 1964). However, it is fairly well established that the right of a specific electorate to vote for state government officials does not of itself establish in that same electorate the right to fill those positions in the event of interim vacancies. As noted by the recent three-judge court decision in Kaelin v. Warden, F. Supp. , (E. D. Pa. 1971):

> "The use of an appointive process as a means to fill an interim vacancy is not foreign to our traditional notions of representative government. In fact, an ap-

> pointive procedure is specifically condoned by the Seventeenth Amendment in order to fill vacancies in the United States Senate. A compelling state interest is furthered by the use of an interim appointment as a stop-gap measure designed to avoid delay in the discharge of public business. . . . (citations omitted)."

Compare Burns v. Richardson, 384 U. S. 73, 90-97 (1966) with Kramer v. Union Sch. Dist., 395 U. S. 621, 632 (1969).

The reasoning in Kaelin sustains the procedures here challenged. As was true in that case these procedures provide for the orderly administration of the township without the possible hiatus in governmental operations necessarily consequent to replacement of a commissioner by resort to public election. Here, too, the preservation of a legitimate state objective is furthered in an area in which the state has a compelling interest, i.e., uninterrupted township government. See — F. Supp. at —. *See also* Abate v. Mundt, 403 U. S. 182 (1971); Turner v. Fouche, 396 U. S. 346, 361 (1970).

The order of the district court will be affirmed.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.

Nos. 71-1503/4/5.

DOLORES BRENNAN, ANNE E. LONERMAN AND WILLIAM JONES

v.

GEORGE R. HAINES, MAX M. SOLOMON, EDWARD M. REILLY, GEORGE F. SHUSTER, WILLIAM D. C. DENNIS, DENNIS P. DOUGHERTY, RUSSELL S. DETWEILLER, FRED W. GENTER, RICHARD Z. KINARD, HORACE F. RICHTER, JR., BERNARD J. ENRIGHT, JR., PERCY S. HARTZELL, JAMES J. SULLIVAN, HENRY J. GRANT, BRYNMOR DAVIS, JR., WILLIAM H. YOST, RUSSELL PARKHOUSE, FRANKLIN JENKINS, AND DANIEL COSTELLO,

DOLORES BRENNAN, APPELLANT IN No. 71-1503,
ANNE E. LONERMAN, APPELLANT IN No. 71-1504,
WILLIAM JONES, APPELLANT IN No. 71-1505.

(D. C. Civil Action No. 70-3144).

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Present: SEITZ, *Chief Judge* and KALODNER and GIBBONS, *Circuit Judges.*

JUDGMENT.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed April 28, 1971, be, and the same is hereby affirmed, with costs taxed against appellants.

ATTEST:

THOMAS F. QUINN,
Clerk.

February 11, 1972.

Costs taxed in favor of appellees as follows:
Brief for appellees $169.34

Certified as a true copy and issued in lieu of a formal mandate on March 6, 1972.

Test:

THOMAS F. QUINN,
Clerk, United States Court of Appeals for the Third Circuit.

ACT OF APRIL 27, 1967, P. L. No. 9, § 1 (53 P. S. § 55530).

When a vacancy occurs in the office of township commissioner in any township, by reason of death, resignation, removal from the township or ward, or otherwise, the board of township commissioners of such township shall fill such vacancy by appointing by resolution a registered voter of the ward or township, as the case may be, in which the vacancy occurs. If the board of township commissioners of any township shall refuse, fail, or neglect, or be unable for any reason whatsoever, to fill such vacancy within thirty (30) days after the vacancy occurs, then the court of quarter sessions shall upon the petition of twenty registered voters of the ward or township, as the case may be, in which the vacancy occurs appoint a registered voter of the township to fill the vacancy. In either event, the person so appointed shall have been a resident of the township continuously for at least one (1) year before his appointment and shall hold office for the unexpired term of the person whose place he is appointed to fill. In townships divided into wards, a commissioner appointed by either the board of commissioners or the court of quarter sessions shall reside in the ward in which the vacancy occurred and shall have resided in said ward continuously for at least one (1) year before his appointment.

THREE-JUDGE COURT ACT.

28 U. S. C. § 2281.

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement, or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title. June 25, 1948, c. 646, 62 Stat. 968.